tiffs in opening his case stated that there was only one issue in the case and that is whether the said building is a new building. The point regarding waiver is therefore not open to the plaintiffs in this court.

We accordingly allow the defendant's cross-appeal with costs and dismiss the plaintiffs' appeal with costs.

Appeal dismissed.

Cross-appeal allowed.

Solicitors: *Tan, Rajah & Cheah; Mallal & Namazie.*

RE TAN KIONG HWA

[O.C.J. (Chua J.) March 15, 1972]

[Singapore — Originating Summons No. 304 of 1971]

Lands Laws — Caveat — Lodgment — Priority in the event of conflicting interests — Withdrawal of — Whether takes effect from lodgment or registration of notice — Land Titles (Strata) Act, 1967 — Land Titles Ordinance, 1956, ss. 37(1), 100, 101(1) 103, 104(1), 106 & 107(1).

By an agreement dated May 10, 1969 the Malaya Union Co. Ltd., the developers, sold flat No. 4-A Ford Mansions, Singapore, to the applicant Tan Kiong Hwa for the price of $36,900. By a subsequent agreement dated February 18, 1970 the developers sold the same flat (then re-numbered 7-A) to one Ali Sjarif for the price of $54,000.00. By a further agreement dated June 29, 1971 the said Ali Sjarif sold the same flat to one Chung Pek Cheng at the price of $67,000. The whole of the block of flats known as Ford Mansions of which No. 7-A Ford Mansions forms part was at all material times mortgaged by Malaya Union Co. Ltd. to the Overseas Union Bank Ltd., and was in fact surrendered to the Government of Singapore for the issue of Subsidiary Strata Certificates of Title in favour of the said bank.

The developers notwithstanding repeated requests of the applicant neglected and refused to take any steps towards completion of the agreement dated May 10, 1969 and on September 24, 1971 the applicant commenced proceedings against the Malaya Union Co. Ltd. for specific performance and damages in Suit No. 1502 of 1971.

Meanwhile on October 1, 1971, that is, about 8 months after the Subsidiary Strata Certificate of Title had been issued in respect of the said flat, Chung Pek Cheng lodged a caveat in the Registry of Titles claiming an interest as purchaser of the said flat under the agreement dated June 29, 1971. On October 5, 1971 the applicant lodged a caveat against the said flat claiming an interest under the agreement dated May 10, 1969. On October 16, 1971 Chung Pek Cheng lodged for registration the following instruments:

(a) a withdrawal of caveat in respect of the caveat lodged by him earlier,

(b) a transfer in his favour executed by both the Overseas Union Bank Ltd. and Malaya Union Co. Ltd.,

(a) a mortgage by him in favour of Chung Khiaw Finance Ltd.

The Registrar of Titles on October 21, 1971 notified the applicant that he intended to register the transfer and the mortgage at the expiration of 21 days unless a court order to the contrary was served on him. The applicant then applied to the court for his caveat to be extended until the trial in Suit No. 1502 of 1971 and the suspension of the registration of the transfer and mortgage lodged by Chung Pek Cheng after the outcome of the said trial.

Held, dismissing the application: (1) the court was concerned with the priority on the register between conflicting interests of the applicant and Chung Pek Cheng. In this case there was no dispute that Chung Pek Cheng was the one first filing a caveat and therefore he was entitled to priority in the absence of fraud;

(2) the withdrawal of caveat lodged by Chung Pek Cheng did not take away the priority that he had gained earlier as the withdrawal of caveat was not accepted for registration by the Registrar of Titles. A withdrawal of caveat can only take effect on registration and not from the time and date of lodgment.

Butler v. *Fairclough* cited with approval.

Cases referred to:-

(1) *Abigail* v. *Lapin* [1934] A.C. 491, 500.

(2) *Butler* v. *Fairclough* (1917) 23 C.L.R. 78.

SUMMONS.

K. E. Hilborne for the applicant.

Tan Ching Tiong for the respondent.

Cur. Adv. Vult.

Chua J.: The following facts are not in dispute by the parties in this matter. By an agreement for sale dated the 10th May, 1969, the Malaya Union Co. Ltd. agreed to sell to the applicant a flat known as No. 4-A Ford Mansion, Singapore for $36,900. The flat forms part of a block of flats being erected by Malaya Union Co. Ltd. on Lot 187-150 of mukim IV and is now known as flat No. 7-A. The applicant paid a deposit of $3,690 and under the agreement for sale the applicant opted to take a mortgage loan of $17,000 from a finance company procured by the Malaya Union Co. Ltd.

By an agreement for sale dated the 18th February, 1970, the Malaya Union Co. Ltd. agreed to sell to Ali Sjarif flat No. 7-A Ford Mansion for $54,000.

By letter dated the 16th March, 1970, the solicitors for the Malaya Union Co. Ltd. confirmed that the applicant could obtain the keys to the flat No. 7-A and take possession of the said flat provided the applicant was willing to bear the property tax, maintenance charges and interest on the unexecuted mortgage loan of $17,000, to which the applicant agreed. In pursuance of the agreement for sale the applicant has paid by instalments a total sum of $20,500.

The title deeds relating to Ford Mansion were surrendered to the Government of Singapore under the provisions of the Land Titles (Strata) Act, 1967, so that the land might be brought under the provisions of the Land Titles Ordinance, 1956 and for the issue of a subsidiary strata certificate of title. The property in question is now comprised in Lot 2989-B-4 of Mukim IV shown on Strata Titles Plan registered No. 078 (Subsidiary Strata Certificate of Title volume 6 folio 14).

By an agreement of sale dated 29th June, 1971, Ali Sjarif agreed to sell flat No. 7-A Ford Mansions to Chung Pek Cheng for $67,000. At that time there was no other interest affecting the said land and premises other than the interest of Overseas Union Bank Ltd., who were the mortgagees thereof duly registered in the Land Titles Registry as the registered proprietor of the said land and premises.

The Malaya Union Co. Ltd. notwithstanding repeated requests by the applicant have neglected and refused to take any step towards the completion of the agreement for sale and on the 24th September,

1971, the applicant in Suit No. 1502 of 1971 commenced proceedings against the Malaya Union Co. Ltd claiming specific performance of the agreement and damages.

On the 1st October, 1971, pending the execution of an instrument of transfer in favour of Chung Pek Cheng, a caveat (CV/389) was lodged with the Registrar of Titles, Singapore, wherein Chung Pek Cheng gave notice of his interest in the said land and premises as purchaser under the said agreement of sale of the 29th June, 1971.

On the 5th October, 1971, a caveat (CV/400) was lodged against the said land and premises with the Registrar of Titles by the applicant claiming interest as purchaser thereof under the agreement of sale of the 10th May, 1969. Notice of lodgment of the said caveat was duly given by the Registrar of Titles and received by Chung Pek Cheng on the 21st October, 1971.

On the 16th October, 1971, before Chung Pek Cheng received the notice of lodgment referred to in the above paragraph the following instruments were lodged by Chung Pek Cheng for registration with the Registrar of Titles:

(a) An instrument of transfer (No. I/3777A) of the said land and premises duly executed by the Overseas Union Bank Ltd. the registered proprietor thereof, in favour of Chung Pek Cheng;

(b) A mortgage (No. I/3778A) in respect of the said land and premises executed in favour of Chung Khiaw Finance Ltd; and

(c) A withdrawal of caveat (WCV/264) in respect of the caveat (CV/389) lodged by Chung Pek Cheng on the 1st of October, 1971.

By a letter dated the 21st October, 1971, the Registrar of Titles gave notice under section 104(1) of the Land Titles Act to the applicant that the abovementioned instrument of transfer and mortgage had been presented for registration and that the registrar intended to proceed with the registration of those two documents at the expiration of 21 days from the date thereof unless an order of court to the contrary was served on him.

On the 29th October, 1971, the applicant filed the present originating summons seeking the following orders:

(1) That the applicant's caveat No. CV/400 be extended for a further period from 21st October, 1971, the date of the registrar's notice until the trial of Suit No. 1502 of 1971 and the satisfaction of any judgment that might be given against the Malaya Union Co. Ltd.

(2) That the registration of the instrument of transfer No. I/3777A and the mortgage No. I/3778A be suspended by the registrar until after the trial of Suit No. 1502 of 1971 and the satisfaction of any judgment which may be entered against the said company.

The application was made *ex parte* and on the 5th November, 1971, the judge made an order in terms of the first prayer. The order was duly served on the 10th November, 1971, on the Registrar of Titles who by letter dated the 11th November, 1971, informed Chung Pek Cheng of the said order and intimating that the registry could not in the circumstances proceed with the registration of the transfer No. I/3777A and the mortgage No. I/3778A.

On the 13th November, 1971, Chung Pek Cheng by summons in chambers applied for an order that the order of court of the 5th November, 1971, be set aside on the grounds that:

(1) Chung Pek Cheng was a person who was injuriously affected by the said order and was not given an opportunity of being heard;

(2) the interest of the applicant in the land and premises was subsequent to the interest of Chung Pek Cheng.

The summons came up for hearing on the 21st January, 1972, and it was ordered that the order of court dated the 5th November, 1961, be set aside and that a copy of the originating summons filed by the applicant be served on Chung Pek Cheng or his solicitors and that an early date be fixed for the hearing of the originating summons.

It is in these circumstances that the originating summons of the applicant is now before me.

The contention of counsel for the applicant is that the real dispute in this case is, who has the real title to this flat and that that would be decided in Suit 1502 of 1971. It is submitted that the court is not concerned at present with priority but is concerned whether the caveat of the applicant should be extended pending the trial of Suit 1502 and that unless the court is satisfied that the action is vexatious, has no merits or is not *bona fide* the caveat should continue.

It will be convenient now to consider the nature and effect of a caveat. Section 100 of the Land Titles Act (Cap. 276) provides that:

"any person claiming an interest in land... may lodge with the Registrar of Titles a caveat in the prescribed form"

forbidding the registration under the Act of any instrument affecting the land, against which the caveat is directed. By section 101(1) the Registrar of Titles is required on lodgment of a caveat to immediately enter particulars thereof in a caveat index to be kept for that purpose and to give notice of such lodgment to the caveatee. Section 103(5) provides that so long as a caveat remains effective the registrar shall not register any instrument which is inconsistent with the provisions of the caveat. Section 104(1) provides that upon lodgment for registration of an instrument the registration of which is prohibited by a caveat, the registrar shall serve on the caveator a notice of his intention, at the expiration of twenty-one days from the date of the notice, to register that instrument unless within the twenty one days — (a) an order to the contrary has been made by the court and served on the registrar; or (b) the instrument has been uplifted or withdrawn or otherwise becomes incapable of registration. Section 107(1) provides that at any time after the lodgment of a caveat the caveatee may summon the caveator to attend before the court to show cause why the caveat should not be withdrawn or otherwise removed and the court may make such order in the premises, either *ex parte* or otherwise, as seems just. Section 37(1) provides that, except in the case of fraud, the entry of a caveat protecting an unregistered interest in land under the provisions of the Act gives that

interest priority over any other unregistered interest not so protected at the time when the caveat was entered.

It can be seen then that the general function of a caveat is to suspend the process of registration until the court has settled conflicting claims. The general scope of the sections dealing with the caveats against dealings is succinctly described by the Privy Council in *Abigail* v. *Lapin*,[1] at page 500: —

"For the protection of equitable interests or estates the Act provides that a caveat may be lodged with the registrar by any person claiming as *cestui que trust*, or under any unregistered instrument or any other estate or interest; the effect of the caveat is that no instrument will be registered while the caveat is in force affecting the land, estate or interest until after a certain notice to the person lodging the caveat. Thus, though the legal interest is in general determined by the registered transfer, and is in law subject to registered mortgages or other charges, the register may bear on its face a notice of equitable claims so as to warn persons dealing in respect of the land and to enable the equitable claimant to protect his claim by enabling him to bring an action if his claim be disputed."

I am unable to agree with the submission of counsel for the applicant. The court is concerned with the priority on the register between the conflicting interests of the applicant and Chung Pek Cheng. The court will have to determine what are the rights of the parties now before the court.

In *Butler* v. *Fairclough*,[2] *G.*, the registered proprietor of land under the Victorian Transfer of Land Act, by an agreement under seal dated 30th June, charged the land with payment of a debt due from himself to *B.* On 2nd July next *G.* transferred the land for value to *F.* who had no notice of *B's* charge. Prior to paying the purchase money, *F.* had searched the register and found it clear of any reference to *B's* charge. On 7th July *B.* lodged a caveat protecting his charge. On 12th July *F.* lodged his transfer for registration. Through a general misunderstanding of the true legal position, both by the parties and by the Registrar of Titles, certain vacillations occurred, resulting ultimately in registration of the transfer without notice to the caveator. It was held (by a majority) that *B.*, by omitting to lodge a caveat before *F.* paid the purchase money and obtained his transfer, had lost the priority arising out of his equitable interest having been created first in point of time; and that the registration of the transfer was valid notwithstanding the registrar's omission to notify *B.*, the caveator. Although *B's* delay in lodging his caveat was but for a few days, it was sufficient to postpone his equity. Griffith, C.J. —

"felt unable to draw any line prescribing the time within which a caveat should be lodged. The person who does not act promptly loses the advantage which he would have gained by promptitude."

There is no dispute in this case that Chung Pek Cheng was the one first filing a caveat and he is therefore entitled to priority in the absence of fraud.

The next point taken by counsel for the applicant is that at the time this application was made (on 24th October, 1971) there was only the applicant's caveat on the register as Chung Pek Cheng had withdrawn his caveat on 16th October, 1971. It is submitted that Chung Pek Cheng has lost whatever priority he had when he withdrew his caveat and the application of the applicant should be granted.

As I have stated, on the 16th October, 1971, Chung Pek Cheng, lodged for registration with the Registrar of Titles:

(a) an instrument of transfer;
(b) a mortgage, and
(c) a withdrawal of caveat WCV/264.

It appears from the note in the certificate of official search No. S/457 issued by the Registrar of Titles that these three documents were lodged with the Registrar of Titles on the 16th October, 1971, at 10.50 a.m. but were not entered or registered on the land register. The applicant's solicitors wrote to the Registrar of Titles enquiring why the withdrawal of caveat WCV/264 was not entered or registered on the land register. The following reply was received from the Registrar of Titles:

"I would inform you that in accordance with established conveyancing and land titles practice in both the registry of Deeds and the Registry of Titles where there are two or more instruments lodged in by the same firm of solicitors concurrently, all the instruments would have to be finally registered at the one and same time if they are in order. If there is any objection as regards any one of the instruments then all of them will not be finally registered until the objection is removed. It can be seen clearly that if our registry does not observe this practice the party on whose behalf the instruments were presented for registration will in all likelihood be adversely affected. For example, if we receive a reconveyance, conveyance and mortgage lodged in at the same time on behalf of the mortgagee in the last mentioned instrument and on the same property, and if we find the mortgage instrument has not complied with our registration requirements the registry could not merely proceed to finalise registration on the reconveyance and conveyance. This would then leave the mortgagee without his security.

The words 'not entered or registered on the land-register' used in our note in our certificate of official search means 'not finally notified or registered.' These words mean that the registrar or deputy registrar has not endorsed and signed a notice or memorial of the instrument on the folio of the land-register. Since the withdrawal of caveat No. WCV/264 was lodged in at the same time as transfer No. I/3777A and mortgage No. I/3778A by the same firm of solicitors on behalf of the mortgagee, and as the transfer and the mortgage were prohibited by caveat No. CV/400 (which caveat was allowed to stand by order of court dated the 5th day of November 1971 and made in originating summons No. 304 of 1971 on the terms as therein mentioned) the registry, therefore, could not in accordance with conveyancing and registration practice complete registration or notification of one instrument, that is, the withdrawal of caveat No. WCV/264, independently of the relating instruments, transfer No. I/3777A and mortgage No. I/3778A, the registration of which have been withheld pending the outcome of Suit No. 1502 of 1971."

Counsel for the applicant submits that as a caveat takes effect immediately on lodgment the withdrawal of a caveat also takes effect immediately on lodgment.

Section 106 provides:

"A caveat may be withdrawn, either wholly or as to part of the land thereby affected, by an instrument of withdrawal signed by the caveator or by his personal representative or, where the caveat was signed by a solicitor, by that solicitor."

Section 103(2) provides that —

"a caveat which is in order for entry in the land register at the date of lodgment of the caveat takes effect from that date."

It is stated by counsel for Chung Pek Cheng that the withdrawal of caveat (WCV/264) was lodged with

the Registrar of Titles so as to enable the said registrar to register the transfer No. I/3777A and the mortgage No. I/3778A and was intended to take effect only when the transfer and the mortgage could be registered.

Section 106 only provides the mode of withdrawal and it is to be noted that there is no provision in the Act similar to section 103(2) as regards withdrawal of caveat. In other words the Act does not provide that a withdrawal of a caveat is to take effect on lodgment as in the cases of a caveat. In my view the withdrawal of a caveat does not take effect on lodgment but only when it is registered.

The application is dismissed with costs.

Application dismissed.

Solicitors: *Hilborne & Co.; Ong Swee Keng & Co.*

RALPH v. PUBLIC PROSECUTOR

[O.Cr.J. (Winslow J.) April 14, 1972]

[Singapore — Criminal Motion No. 14 of 1972]

Criminal Law and Procedure — Bail — Granting of — Pending appeal — No special reasons — Discretion of court — Criminal Procedure Code (Cap. 113, 1970 Ed.) s. 351.

This was an application under section 351 of the Criminal Procedure Code, for the applicant to be admitted to bail pending his appeal against his conviction on four charges of corruption and one charge of criminal breach of trust in respect of $102,784,96 for which he was sentenced to 2 years' imprisonment in all.

It was stated in the affidavit in support of the application that the learned senior district judge had failed or refused to exercise his discretion in the matter. The affidavit also referred to the length of the imprisonment in comparison with the length of time which is likely to elapse before the appeal is heard, to the effect that this was the first conviction of the appellant and that he was of good character.

Held, dismissing the application: it had not been shown that the learned district judge had exercised an arbitrary discretion in the matter.

Cases referred to:-

(1) *Johore* v. *R.* (1907) 11 S.S.L.R. 36.

(3) *R.* v. *Lim Soh Chwee & Anor.* B.C.G.H. 178.

(3) *Doraisamy* v. *Public Prosecutor* (K.L. Criminal Application No. 2 of 1954 — unreported).

(4) *Re Kwan Wah Yip* [1954] M.L.J. 146.

(5) *Goh Beow Yam* v. *R.* [1956] M.L.J. 251.

(6) *R.* v. *Tan Tee* [1948] M.L.J. 153.

CRIMINAL MOTION.

H. L. Wee for the applicant.

Loh Lin Kok (Deputy Public Prosecutor) for the Public Prosecutor.

Winslow J.: This is an application to the High Court under section 351 of the Criminal Procedure Code (Cap. 113) for the applicant to be admitted to bail pending his appeal against his conviction on four charges of corruption and one charge of criminal breach of trust in respect of $102,784.96 for which he was sentenced to 2 years imprisonment in all.

It is undisputed that both the district court and the High Court have a discretion in the matter to admit him to bail. It is stated both in the affidavit in support of the application and from the Bar by Mr. Harry Lee Wee, counsel for the applicant, that the learned senior district judge brushed aside the application for bail after conviction and sentence with the remark that he never granted bail unless there were very special reasons and that, by refusing to grant bail, he failed or refused to exercise his discretion in the matter.

For the purposes of this application to the High Court under section 351, I am not really concerned with this matter in an appellate capacity as to his refusal to grant bail. I therefore propose to deal with the matter in the light of the relevant consideration advanced by his wife in the affidavit filed in support of the application with a view to deciding whether I should exercise my discretion in his favour.

I have carefully considered the trend of judicial opinion relating to the relevant factors to be weighed in the balance before the discretion to grant bail is exercised. At one stage, in 1907 and, later, in 1911 Fisher J. expressed an opinion, which appears to have been acted upon for many years, to the effect that execution should be stayed pending appeal on the finding of reasonable security by a person convicted before the subordinate courts (see *Johore* v. *R.*[1] and *R.* v. *Lim Soh Chwee & Anor.*[2]).

In 1954, in the unreported case of *Doraisamy* v. *Public Prosecutor,*[3] Wilson J. observed that a stay of execution should not be granted (under a provision similar to our section 241 of the Criminal Procedure Code) unless there are special reasons for doing so. He was also of the view that the mere fact that the applicant had been advised and verily believed that he had good grounds for appeal did not constitute sufficient grounds for releasing the applicant pending his appeal.

Later in the same year, Spenser Wilkinson J. in *Re Kwan Wah Yip*[4] found himself in substantial agreement with the views expressed by Wilson J. He also said:

"When a lower court has refused bail then I agree that the High Court should not interfere with the discretion of the lower court unless there are good reasons for so doing and as the High Court has not heard the case such reasons must be set out in the affidavit in support of the application for bail. There may be cases in which a magistrate has made an error in law that is obvious on the face of the record and there may also be cases where it is plain that a magistrate has seriously misinterpreted the facts. Circumstances such as these might be reasons if properly set out in the affidavit which would induce the High Court to grant bail where the lower court has refused it.

It seems to me, however, that the granting of bail pending appeal by the lower court being a matter of discretion a magistrate may, apart from the accused's statement that he intends to appeal, find in the circumstances of the case before him reasons which would justify the granting of bail. The considerations which I suggest should guide the subordinate courts in granting or refusing bail pending appeal in cases where a term of imprisonment has been imposed are the gravity or otherwise of the offence; the length of the term of imprisonment in comparison with the length of time which is likely to take for the appeal to be heard; whether there are difficult points of law involved; whether the accused